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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,321	11/21/2003	Dennis Osamu Hirotsu	AA551C	3072

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
CRAIG, PAULA L	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,321	HIROTSU, DENNIS OSAMU	
	Examiner	Art Unit	
	Paula L. Craig	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/21/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 3, 5, and 6 are objected to because of the following informalities: In Claims 3 and 5, the wording "has an enough size" is grammatically awkward; "has a size large enough" is suggested. In Claims 5 and 6, the phrase "the opening structure" lacks antecedent basis. In Claim 6, it is not clear whether a single rear panel or a plurality of rear panels is being claimed. Also in Claim 6, line 2 of the claim, "connects" should be "connect". Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 3-4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. Des. 312,208 to Sorkin.

5. For Claim 1, Sorkin teaches an absorbent product (Claim). The product includes a package having at least one window and an outer surface (Fig. 1). A plurality of absorbent articles are contained in the package (Claim and Figs. 1-5). The absorbent articles include at least two different types of absorbent articles (see Figs. 2, 4, and 5). Each type of absorbent article is identified by an indication means disposed on the respective absorbent articles (see indicated colors, Figs. 2, 4, and 5). The indication means of the at least two types of absorbent articles can be seen through the window (Figs. 1-2 and 4-5). Sorkin teaches the absorbent articles being diapers (Claim). Sorkin does **not** expressly teach the absorbent articles being disposable. However, it is well known for diapers to be disposable. The Examiner takes official notice that the appearance of the diapers in the drawings of Sorkin is typical for disposable diapers and strongly suggests that the diapers are disposable diapers (Figs. 1-2 and 4-5). It would be obvious to one of ordinary skill in the art at the time of the invention for a diaper to be disposable.

6. For Claim 3, Sorkin teaches the window having a size large enough so that at least 30% of the contained absorbent articles can be seen through the window. See Figs. 1-2 and 4-5.

7. For Claim 4, Sorkin teaches the indication means including colors. See Figs. 2 and 4-5.

8. For Claim 7, Sorkin teaches the window being formed by differentiating the translucency or transparency at the window from the area surrounding the window. See Figs. 1 and 4.

9. Claims 1, 2, 4-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,865,322 to Miller in view of U.S. Patent No. 3,306,437 to Nelson.

10. For Claim 1, Miller teaches a disposable absorbent product having a package (dispensing device 20, Figure and col. 3, lines 1-14). The package has at least one window and an outer surface (the window is discharge ports 36, Figure and col. 3, lines 22-24). A plurality of disposable absorbent articles is contained in the package, including at least two different types of absorbent articles (Figure and col. 3, lines 29-34). Miller teaches that the absorbent articles would be dispensed in packages containing from 1-10 products per package (col. 4, lines 6-10). Miller teaches the absorbent articles being identified by an identification means for the absorbent articles on the package (Figure). Miller indicates that individual products are dispensed for each category of product, and that these are labeled with an indicia, which matches the indicia on the window (col. 3, lines 58-62). Miller is unclear as to the indication means being disposed on the respective absorbent articles. However, such indication means on the articles would be essential for the display system of Miller to operate as described in Miller. Miller indicates that after making the correct product selection the consumer must pay for the packages of products at the check out counter; this would

not be possible unless the absorbent articles were identified in some way (col. 4, lines 24-34). Miller does not expressly teach the indication means of the types of absorbent articles being seen through the window. Having an indication means of an article being dispensed visible through a window is well known. Nelson confirms this and teaches a carton for a mixed group of small packaged articles (Fig. 2, col. 4, lines 1-9). The carton has a window (Nelson, dispensing opening 18, Fig. 2 and col. 4, lines 31-33). The articles of Nelson each have an indication means disposed on the respective article (color spot 26 or overall color, col. 3, lines 52-75). The indication means can be seen through the window (Nelson, col. 3, lines 52-75, col. 4, lines 31-62, and Claims 4, 7, and 8). This enables readily picking the correct item (col. 4, lines 9-13). Nelson teaches that the carton is suitable for use with small containers to be dispensed (col. 1, lines 58-61). Nelson teaches that the carton with the system of color coding lends itself admirably to the dispensing of special packaged items, since several different items can be packaged and shipped together (col. 4, lines 1-8). It would have been obvious to one of ordinary skill in the packaging art at the time of the invention by the Applicant to modify the package of Miller to include having the indication means be seen through the window, as taught by Nelson, to allow the right item to be readily picked out of the package.

11. For Claim 2, Miller teaches the at least two different types of absorbent articles being defined by the absorbent capacity of the absorbent articles (Figure).

12. For Claim 4, Miller teaches the indication means of the absorbent articles being characters (Figure). Nelson teaches the indication means on the packaged items being

colors (col. 3, lines 56-75). It would be obvious for one of ordinary skill in the art to modify the package of Miller to include the indication means on the packaged items being colors, as taught by Nelson, for the same reasons as described above for Claim 1 in paragraph 10.

13. For Claim 5, Miller teaches the package having an opening device which has a size large enough so that the different types of absorbent articles can be picked up by the user through the opening device (col. 4, lines 27-32).

14. For Claim 6, Miller teaches the package having a front panel, rear panel, side panels, and a top panel (Figure). The window is formed on the front panel and the opening device is formed on the top panel (Figure and col. 4, lines 24-32).

15. For Claim 8, Miller teaches that each of the disposable absorbent articles includes an individual flexible wrapper or bag which wraps or contains the respective absorbent article (Figure and col. 4, lines 21-23). Miller does not expressly teach the indication means being disposed on the wrapper or bag. Nelson teaches an indication means disposed on a wrapper (Fig. 2 and col. 3, lines 52-75). It would have been obvious to one of ordinary skill in the art to modify the flexible wrapper of Miller to include indication means disposed on the wrapper, as taught by Nelson, for the same reasons as described above for Claim 1 in paragraph 10.

16. For Claim 9, Miller teaches the outer surface of the package providing first information, while the window provides second information which has a relevancy to the first information (Figure and col. 3, lines 34-62).

17. For Claim 10, Miller teaches the disposable absorbent articles being feminine hygiene articles (col. 3, lines 1-3).

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1-2 and 4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claim 5 of U.S. Patent No. 6,601,705 to Molina in view of U.S. Patent No. 5,897,542 to Lash et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ in that Molina does not require more than one type of absorbent article in the package. Lash teaches having more than one type of absorbent article in the package (Abstract). Lash teaches that this provides convenience (col. 9, lines 47-49). It would

have been obvious to one of ordinary skill in the art to modify the package of Molina to include placing more than one type of absorbent article in the package, as taught by Lash, to provide convenience.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,556,146 to Swanson and 5,569,228 to Byrd et al. show wrappers for individual absorbent articles. U.S. Patent No. 5,967,665 to MacDonald et al. shows a package for absorbent articles with windows showing graphics on the articles. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKA
SUPERVISORY PRIMARY EXAMINER